

APR - 7 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 9)
of the Communications Act)
)
Assessment and Collection of)
Regulatory Fees for the 1994)
Fiscal Year)

MD Docket No. 94-19

To: The Commission

**COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys, respectfully submits, pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, its Comments in response to the Notice of Proposed Rule Making issued by the Federal Communications Commission on March 11, 1994, which seeks to amend the Commission's Rules to provide the assessment and collection of regulatory fees.¹

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has six membership sections

¹59 FR 12570 (March 17, 1994).

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representing Users, Private Carrier Paging licensees, radio system integrators, Technicians, Specialized Mobile Radio operators and Tower Site Owners and Managers. NABER's membership comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies. In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

The purpose of this proceeding is to implement Section 9 of the Communications Act of 1934. This section was added by Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993.² The Act now provides for the collection by the Commission of fees to recover costs incurred in carrying out its various regulatory activities.

²Pub. L. No. 103-66, Title VI, §6002(a), 107 Stat. 397 (approved August 10, 1993). See, 47 U.S.C. §159.

II. COMMENTS

No matter what form the Commission regulatory fee program takes, the most important issue in the adoption of fee requirements is adequate public notice. Unlike most of the other radio services regulated by the Commission, the majority of private radio licensees (other than private carriers) are not in the business of radio communications. Instead, private radio licensees are typically in other businesses, and use radio as an adjunct to their primary business. As a result, the dissemination of information concerning FCC fees has in the past been difficult, at best.

When the Commission adopted licensing fees, and again when the fees were raised to \$35.00, NABER was receiving applications more than nine (9) months after the changes from applicants who were not aware of the fee or the fee increase. Given the tens of thousands of private radio applications received by the coordinators and the Commission each year, the administrative burden associated with failure to inform adequately the public of the new fee schedule will result in a cost greater than the fee collected. Therefore, NABER urges the Commission to ensure plenty of "lead time" for the public to be informed of the effective date of the new fees.

Another logistical problem in the private services may occur from the Commission's suggestion in Paragraph 36 of the NPRM that "... for the first round of fee payments for regulatees in the private radio service, we may require payments subsequent to the time when the application is filed." NABER discourages the Commission from taking such action. The tens of thousands of applications which the Commission receives in the private services

would make the later payment of fees (with no associated application) difficult to administer. In any event, should the Commission elect to require later payment of fees, NABER requests that the Commission specify that such fees should be paid directly to the lockbox bank, and not to frequency advisory committees.

In Paragraph 25 of the NPRM, the Commission discusses procedures for requesting a waiver of the regulatory fee. In the private services, the waiver fee (\$105.00) is higher than the five year regulatory fee. In order to eliminate this disparity, NABER suggests two alternatives. First, the Commission could require a lower waiver fee in the private services, possibly \$10.00. Alternatively, the Commission could require that the waiver fee for all requests for waivers of the regulatory fee be a fixed percentage of the regulatory fee, such as ten (10) percent.

In paragraph 35 of the NPRM, the Commission states that common carriers do not need to make advanced payments, which will be required of private licensees. However, there are numerous private systems that are to be reclassified as commercial mobile radio providers ("CMRS"), and then be subject to Title II regulation. The Commission must address the circumstance where a private carrier pays a five year regulatory fee today, and then is reclassified as CMRS and is required to pay annual regulatory fees prior to the expiration of the five year term. NABER suggests that the Commission specify that reclassified private carriers do not need to pay an annual regulatory fee until their next renewal after reclassification.

Finally, in paragraph 98 of the NPRM, the Commission discusses the use of FCC Form 159, "FCC Remittance Advice". NABER is unclear as to whether the Commission intends to eliminate the current form (Form 155) and utilize one form for both filing and regulatory fees, or whether two forms will now be used. NABER suggests that the Commission utilize only one combined form for filing and regulatory fees, and that the Commission continue to exempt filers of FCC Form 574 from also filing the fee form for routine applications.

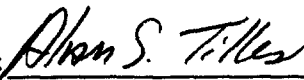

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

By: 
David E. Weisman, Esquire

By: 
Alan S. Tilles, Esquire 

Its Attorneys

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

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